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NO. 283

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

DONALD F. KNOX,
Petitioner,

vs.

THE STATE OF OHIO
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Donald F. Knox
127 W. Northwood Avenue
Columbus, Ohio 43201
Petitioner

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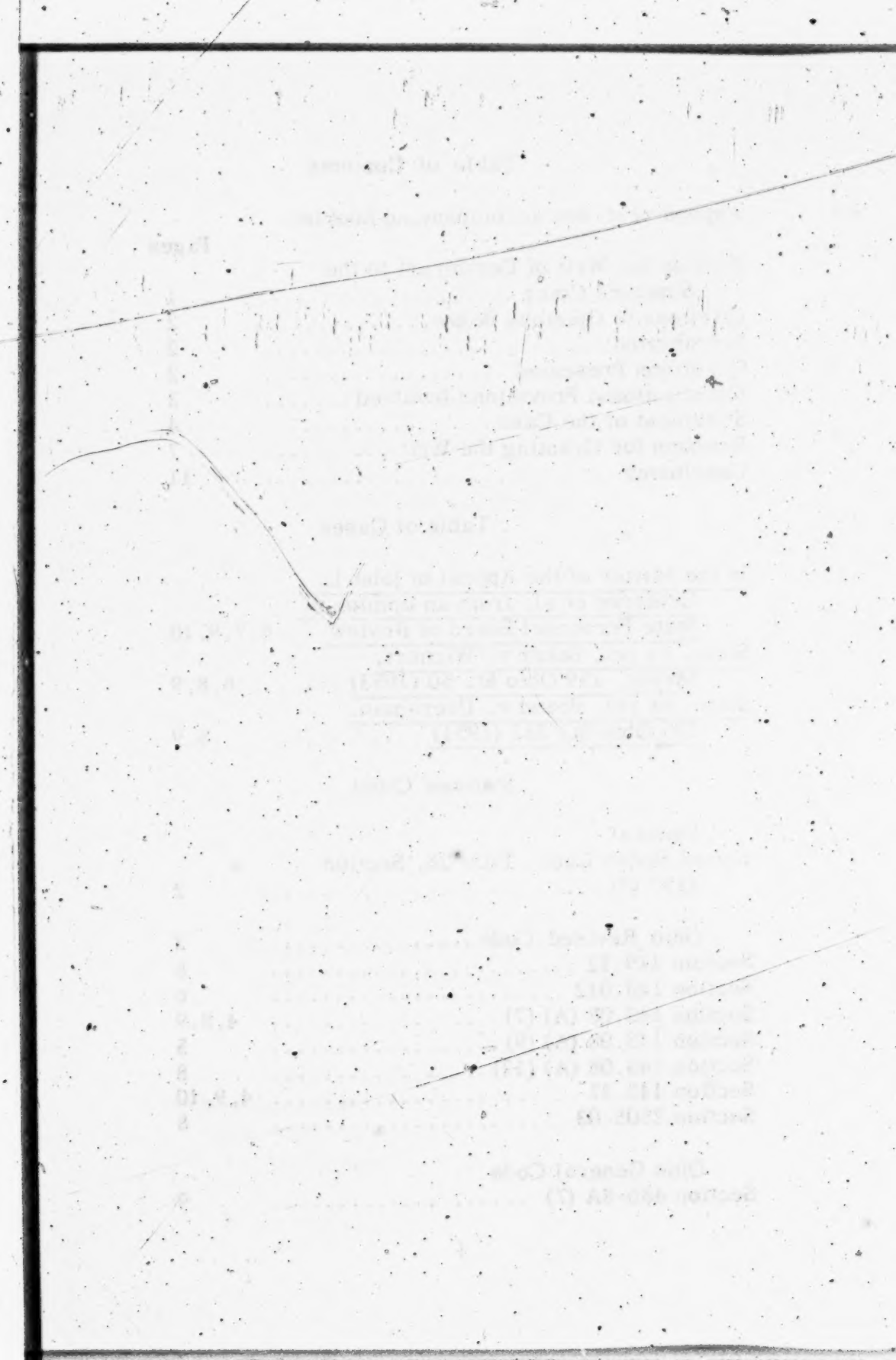

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered in the Matter of Appeal of Donald F. Knox from a Decision of the State Personnel Board of Review on January 11, 1967.

CITATIONS TO OPINIONS BELOW

The opinions of the lower courts are unreported, which include those of the State Personnel Board of Review of Ohio, the Common Pleas Court of Franklin County, Ohio, the Court of Appeals of Franklin County, Ohio and the Supreme Court of Ohio. These opinions are printed in the Appendix.

JURISDICTION

The judgment of the Supreme Court of Ohio rendered upon the petitioner's motion for rehearing was entered on January 11, 1967. The Supreme Court of the United States issued an Order Extending Time to file Petition for Writ of Certiorari on April 7, 1967, whereby the time for filing the petition was extended to and including June 10, 1967. The statutory provision believed to confer jurisdiction to review the judgment by writ of certiorari is United States Code, Title 28, Section 1257 (3).

QUESTIONS PRESENTED

1. Does the action of the State Personnel Board of Review of Ohio in ignoring the testimony of the petitioner, in failing to produce evidence upon which to base its final order, and in failing to provide an opportunity for the petitioner to testify in his own defense against the charge contained in its final order constitute a denial of the petitioner's constitutional right to due process of the law under the Fourteenth Amendment.

2. Does the action of the Common Pleas Court of Franklin County, Ohio in ignoring the final order of

the State Personnel Board of Review of Ohio and thus ruling upon an issue not presented to it and in choosing an obviously inapplicable section of the Revised Code of Ohio as a basis for its decision constitute a denial of the petitioner's right to due process?

3. Does the action of the Court of Appeals of Franklin County, Ohio in rendering a decision in the Knox case on May 3, 1966 and then rendering on December 13, 1966 in another case a decision contrary to that in the Knox case constitute a denial of the petitioner's right to equal protection of the law under the Fourteenth Amendment?

4. Does the action of the Court of Appeals of Franklin County, Ohio in failing to utilize the controlling precedent case as a basis for its decision constitute a denial of the petitioner's right to equal protection of the law and due process of the law?

5. Does the action of the Supreme Court of Ohio in failing to hear an appeal from these contrary decisions out of the Court of Appeals of Franklin County, Ohio, as cited above, constitute a denial of the petitioner's right to equal protection of the law?

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner was employed at University Hospital, Ohio State University, Columbus, Ohio as an unclassified employee and was terminated on May 14, 1964 without protection of civil service law. An appeal was filed with the State Personnel Board of Review on October 9, 1964 based on the contention that the petitioner should have been carried in the classified service according to Section 143.08 (A) (7) of the Revised Code of Ohio and thus should have had protection of Section 143.27 of the same code. That contention was examined at a hearing before the Board on December 1, 1964. Also, one single question was asked of the petitioner concerning the time interval between termination and appeal: he replied that he appealed as soon as he learned of his right of appeal (p. 32 of transcript).

On March 18, 1965 the respondent filed a motion with the Board (see record) requesting dismissal of the appeal for reason that it had not been brought within a reasonable period of time. The Board sustained the motion in a decision dated April 9, 1965 (Appendix A). As a result, the petitioner proceeded to raise objections to the denial of certain procedural rights in the following manner, all of which are contained in the record before this Court.

In the memorandum contra motion filed with the

Board on March 22, 1965, the petitioner stated that the respondent had disregarded petitioner's testimony regarding the time interval prior to making an appeal to the Board and had failed to produce evidence in support of a charge of unreasonable delay (p. 1). The petitioner appealed the Board's decision to the Common Pleas Court of Franklin County, Ohio, and in his brief, filed June 16, 1965, he pointed to the Board's ignoring the appellant's testimony about the time interval and failure to produce evidence (pp. 2-3). In the petitioner's reply brief to the same court on August 19, 1965, the failure to obtain evidence was again cited (p. 1). On October 11, 1965, the petitioner filed a motion and accompanying affidavit with the same court. The memorandum in support of the motion again referred to the failure to obtain evidence in support of unreasonable delay and offered the additional objection that the Board had denied the petitioner the opportunity to testify in his own defense against the charge of unreasonable delay (p. 2). The affidavit described each step taken by the petitioner from the time of termination up until the appeal to the Board. A reply memorandum was filed on October 22, 1965 which again raised the objections cited immediately above (pp. 1-2).

The Common Pleas Court of Franklin County, Ohio dismissed the appeal on October 28, 1965 (Appendix B), and in that decision there was no mention of the issues presented before that court; instead, the petitioner was described as being either a deputy or an assistant to a principal executive officer according to Section 143.08 (A) (9) of the Revised Code of Ohio.

The appellant raised procedural and substantive objections to this decision by assignment of error in his

brief to the Court of Appeals of Franklin County, Ohio filed February 8, 1966. First, the petitioner asserted that the Common Pleas Court ignored the final order of the Board and dealt only with the substantive issue which had never been decided by the Board (p. 3 of brief). Also, the petitioner again raised the previously stated objections to the action of the Board (pp. 9-10 of brief).

The Court of Appeals of Franklin County, Ohio rendered a decision on May 3, 1966 (Appendix C), which stated that Knox, being an unclassified employee, had no right of appeal to the State Personnel Board of Review at the outset of the case as based upon Section 143.012 of the Revised Code of Ohio and upon the decision in State, ex rel. Baker vs. Wichert, Mayor, 159 Ohio St. 50 (1953). The Court did not touch upon any of the issues presented to it.

The petitioner appealed to the Supreme Court of Ohio for certification (see record, Aug. 8, 1966) on the basis of the intent of the legislature in formulating section 143.012 of the Revised Code of Ohio and of great public interest. The Supreme Court of Ohio overruled the petitioner's motion to certify on December 14, 1966 (Appendix D).

On December 13, 1966, just one day prior to the decision by the Supreme Court of Ohio in the Knox case, the Court of Appeals of Franklin County, Ohio rendered a decision In the Matter of the Appeal of John L. Crabtree et al. from a decision of the State Personnel Board of Review, Case Numbers 8430-35 (Appendix E). In this decision, a group of unclassified employees were found to have been incorrectly carried in the unclassified service with the result that the court remanded the case to the

State Personnel Board of Review for a hearing on the merits of the dismissal. Thus the court did indeed affirm the jurisdiction of the Board in a question of an employee's unclassified status. Such a decision was directly contrary to that in the Knox case since the Board therein denied such jurisdiction. The petitioner had been denied protection of the civil service law in the matter of his termination whereas Crabtree et al. were granted such protection only a few months later by the same Court.

In response to the Crabtree decision, the petitioner filed in a timely manner a motion for rehearing (see record, Dec. 27, 1966), with the Supreme Court of Ohio on the basis of lack of equal protection of the law, and this motion was overruled on January 11, 1967 (Appendix F).

The petitioner received on April 7, 1967, an extension of time up to and including June 10, 1967 for filing this petition by which an appeal is made from the decision of the Supreme Court of Ohio on January 11, 1967 that overruled the petitioner's motion for rehearing.

REASONS FOR GRANTING THE WRIT

The State Personnel Board of Review denied the petitioner the opportunity to testify in his own defense, dismissed his appeal on a charge that had no supporting evidence, and ignored his testimony regarding the time interval prior to his appeal to the Board. Thus the petitioner was denied due process of the law. The respondent claimed that the petitioner had opportunities to testify: first, when the one question was asked of the petitioner at the hearing relative to the time interval between job termination and appeal and, secondly, at the time of the filing of the motion to dismiss with the Board. The petitioner maintains that he had no obligation in either case

to take the initiative in proving his innocence but that the Board and the respondent bore the responsibility for producing evidence in proof of alleged unreasonable delay.

The Common Pleas Court of Franklin County erred in ignoring the final order of the Board and in choosing an inapplicable section of the Revised Code upon which to dismiss the appeal. Thus the petitioner was again denied due process of the law. The petitioner stated to the Court of Appeals of Franklin County, Ohio that Section 2505.03 of the Revised Code of Ohio provides that the final order of a tribunal may be reviewed when provided for by law and that Section 119.12 of that code is the law that provides for said review from a final order of the State Personnel Board of Review (p. 3 of brief). Furthermore, the petitioner maintained that the court chose what is very obviously an inapplicable section of the Revised Code of Ohio: sub-sections (7) and (12) of Section 143.08 (A) are the only ones that pertain to state employees in educational institutions and (12) was not applicable in the Knox case (p. 11 of brief). At the hearing before the Board, all parties were in agreement on the matter of sub-section (7) being the controlling statute. Furthermore, in State, ex rel. Brand v. Eversman, 155 Ohio St. 383 (1951), the Supreme Court of Ohio employed only sub-section (7) in that appeal of an employee in an educational institution.

The Court of Appeals of Franklin County, Ohio erred in ruling that the State Personnel Board of Review did not have the jurisdiction to hear an appeal from an unclassified employee as a result of failing to utilize the controlling precedent case. This argument was not presented to the Supreme Court of Ohio. The petitioner maintains that the case of State, ex rel. Baker v. Wichert, Mayor, 159

Ohio St. 50 (1953) was not a valid precedent case because the appellant was an unclassified employee who appealed her termination on the basis that she had become a classified employee while working at a job that was normally classified despite the fact that she had taken none of the required procedural steps. Her appeal was correctly denied.

But the petitioner appealed on the basis that he should have been in the classified service; therefore, the controlling precedent case should have been State, ex rel. Brand v. Eversman, 155 Ohio St. 383 (1951), which was decided by the identically same set of judges of the Supreme Court of Ohio as decided the Baker case. Brand, who was an employee of a state educational institution, claimed that he should have been in the classified service. The Supreme Court of Ohio, although denying his appeal on the merits, did provide a thorough examination of those merits as compared with the same court's denial of Baker's appeal without such an examination. The action of the court in the Brand case affirmed a long held principle that an unclassified employee has protection of the civil service law upon raising a question about his unclassified status.

The Court of Appeals, by failing to utilize the controlling precedent case, denied the petitioner due process and equal protection of the law. The latter denial was a result of the fact that Brand received protection under Section 486-8A (7) of the General Code (identical to Section 143.08 (A) (7) of the Revised Code for these purposes) to the extent that his appeal was heard on the merits whereas Knox was denied such protection of the law.

The petitioner appealed from the decision of the Court

of Appeals to the Supreme Court of Ohio on a motion to certify, and this was overruled on December 14, 1966 (see record, that date).

On December 13, 1966, the preceding day, the Court of Appeals of Franklin County, Ohio rendered a decision in the Crabtree case whereby the appeal of a group of unclassified employees was remanded to the Board for a hearing on the merits (Appendix E). Thus the court did affirm the jurisdiction of the Board in an appeal from an unclassified employee and thus granted said employee protection of Section 143.27 of the Revised Code of Ohio. Such action was contrary to the same court's decision in the Knox case, with the result that Knox was denied equal protection of the law.

The petitioner appealed from these contrary decisions to the Supreme Court of Ohio in a timely manner on the basis of lack of equal protection (see record Dec. 27, 1966). This motion for rehearing was overruled on January 11, 1967 (see record, that date).

The Court of Appeals attempted to distinguish between the Knox and Crabtree cases on the basis of the several appellants in the latter case (p. 10, Appendix E), but such is impossible. The respondent also attempted to make such a distinction (see record, Jan. 3, 1967, p. 3) on the basis that the position held by Crabtree et al. had once been carried in the classified service and subsequently illegally removed whereas Knox's position had never been in the classified service. Such is irrelevant: both Knox and Crabtree were in the unclassified service upon their appeals to the Board, which is the crucial point in comparing the two cases and one which

the respondent fully accepted in the memorandum of January 3, 1967 (see record of that date, p. 3).

The Supreme Court of Ohio, by overruling the petitioner's motion for rehearing that was filed on the basis of lack of equal protection of the law, did deny the petitioner equal protection of the law by failing to act upon the contrary decisions in the lower court (see record, Jan. 11, 1967).

The petitioner maintains that these instances of denial of due process and equal protection of the law were prejudicial. The denials of due process were such departures from accepted legal procedure that one can state unequivocally that innumerable litigants have been served by those same courts without becoming subject to errors of such magnitude. The denials of equal protection of the law by the Court of Appeals of Franklin County, Ohio and the Supreme Court of Ohio were prejudicial because other parties, i.e. Brand and Crabtree et al. received protection of the civil service law while the same was denied to the petitioner.

CONCLUSION

Based upon the foregoing reasons, this petition for certiorari should be granted.

Respectfully submitted,

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Petitioner